

(1990) 11 MAD CK 0074
In the Madras High Court

A. Madasamy Nadar

APPELLANT

Vs

A.J. Khaja Nazamudeen and Others

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(i), 10(2)(ii) (a)

Citation : (1991) 532 MLJ 1

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—The 2nd respondent in R.C.O.P. No. 11 of 1-981 on the file of the Rent Controller (District Munsif), Uthamapalayam, is the petitioner in this civil revision petition. The petitioners 1 and 2 in the said R.C.O.P. are the respondents 1 and 2 in the civil revision petition. The first respondent in R.C.O.P. No. 11 of 1981 is the third respondent herein. The third respondent in the R.C.O.P. is the fourth respondent herein. For the sake of convenience the parties are referred to by the nomenclature given to them in the Rent Control Original petition.

2. The petitioners filed R.C.O.P. No. 11 of 1981 under Sections 10(2)(i), 10(2)(ii) (a), 10(2)(vii) and 14(1)(b) of the Tamil Nadu Building (Lease and Rent Control) Act, XVIII of 1960, hereinafter called the Act. The case of the petitioners is as follows: The petition mentioned property belongs to the petitioners by inheritance. It was leased out by the father of the petitioners to one Serma Sami on a monthly rent of Rs. 23 even before 1972. The said Serma Sami was paying rent and obtaining printed receipts and the last receipt was issued on 12.11.1973. On the death of Serma Sami his brother, the second respondent, let out by the petition property to the first respondent and he was collecting rent. The second respondent did not pay any rent to the petitioners from 1.10.1973 though he would set up a case of joint family between himself and his brother, Serma Sami. As the respondents have not paid the rent for a period of six years, the petitioners issued a notice to the first respondent on 18.8.1980. The second

respondent sent a reply denying the title of the petitioners. The petition mentioned building is required for demolition and reconstruction.

3. The second respondent resisted the petition for eviction contending as follows: The petitioners are not the owners of the petition mentioned property. The ground floor of the petition mentioned building is in the Highways Road, Poramboke and it belongs to the Government. The second respondent and his brother, Serma Sami were running a shop for eight years and subsequently the second respondent alone is now running the shop for the past 22years. There is no relationship of landlord and tenant between the petitioners and the second respondent and therefore, the petition is not maintainable.

4. On a consideration of the evidence on record the learned Rent Controller found that there is a relationship of the landlord and tenant between the petitioners and the second respondent; that the second respondent has denied the title of the petitioners; that he has committed wilful default in the payment of rent to the petitioners and that the petitioners bona fide required the building in question for demolition and reconstruction. Consequently the Rent Controller allowed the Rent Control Original Petition and passed an order of eviction against the second respondent.

5. As against the order of the Rent Controller the second respondent filed an appeal R.C.A. No. 1 of 1986 before the Appellate Authority (Sub Court, Periyakulam). By confirming the findings of the Rent Controller, the Appellate Authority dismissed the Rent Control Appeal. Aggrieved by the judgment of the Appellate Authority the second respondent had filed the present civil revision petition. Mr. G. Masilamani, learned Counsel for the second respondent raised two contentions in this civil revision petition. Firstly the learned Counsel would contend that the petitioners have not established their title to the petition mentioned property by proving that their father was entitled to the petition mentioned property and after his death, the petitioners are the only heirs of their father. In other words, learned Counsel contended that the petitioners are, not landlords within the meaning of Section 2(6) of the Act and, therefore, they cannot maintain the petition for eviction. The second contention of the learned Counsel for the second respondent is that the second respondent is not a tenant within the meaning of Section 2(8) of the Act. There is no relationship of landlord and tenant between the petitioners and the second respondent and, when there is no such relationship of landlord and tenant between the petitioners and the second respondent, the question of denial of title of the landlords by the tenant as found by the Rent Controller and the Appellate Authority, does not arise. In support of the above contention, learned Counsel relied on the decisions reported in Haji Abdullah Sait Vs. K. Sanjeevi Rao and Others, and (1979)92 L. W. 766. In the light of the above contentions of the learned Counsel for the second respondent the two points which arise for consideration in this civil revision petition are:

(1) Whether the petitioners are landlords within the meaning of Section 2(8) of

the Act; and whether they can maintain the petition for eviction against the second respondent. (2) Whether the second respondent is a tenant within the meaning of Section 2(8) of the Act and whether there is a relationship of landlord and tenant between the petitioners and the second respondent and whether the denial of title of the petitioners by the second respondent is bona fide.

7. Point 1: The petitioners' case is that the petition mentioned property belongs to them by inheritance. Ex. A-2 is the xerox copy of the settlement deed executed by the grandfather of the petitioners in favour of the father of the petitioners. The petitioners' case is that after the death of their father they have inherited the petition mentioned property. The evidence in this case discloses that one Serma Sami, brother of the second respondent, became a tenant under the father of the petitioners and the said Serma Sami was paying rent for the petition mentioned building till 17.11.1973. Exs. A-11 to A-13 are the counterfoils of rent receipts issued to Serma Sami and Exs. A-11 to A-13 are signed by the tenant, Serma Sami. Exs. A-9 and A-10 are the house tax receipts for the petition mentioned property. The above documents show that the petition mentioned property belongs to the petitioner's father. Even assuming that the petitioners are not the only heirs of their father and there are other heirs, who are not impleaded as parties in the Rent Control Original Petition, the petitioners alone as co-owner of the petition mentioned property after the death of their father can maintain the petition for eviction on behalf of other co-sharers. Section 2(6) of the Act defined a "landlord" as follows:

"Landlord" includes the person who is receiving or is entitled to receive the rent of a building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

In *Kanta Goel Vs. B.P. Pathak and Others*, , the Supreme Court dealing with the question whether one co-owner can maintain a petition for eviction on behalf of other co-owners held as follows:

This court, in *Sri Ram Pasricha Vs. Jagannath and Others*, , clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is: Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property... It is therefore not possible to accept the submission that the plaintiff, who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13(1)(f) as long as he is a "co-owner of the property, being at the same time acknowledged landlord of the defendants." That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owner on record

disentitled the first respondent from suing for eviction, fails.

In view of the above discussion it has to be held that the petitioners are landlords within the meaning of Section 2(6) of the Act and they can maintain the petition for eviction against the tenants. The contention of the learned Counsel for the second respondent that Ex. A-2, which is only a Xerox copy of the Settlement deed in favour of the petitioners' father is inadmissible in evidence, cannot be countenanced, because, such an objection was not raised at the time of marking of the document Ex. A-2 nor such a point was raised either before the Appellate Authority or in the grounds of revision.

8. Point 2: Let us now consider whether the second respondent is the tenant within the meaning of Section 2(8) of the Act. Section 2(8) of the Act runs as follows:

"Tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who-

(i) in the case of residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant, and

(ii) in case of non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continues to carry such business, thereafter and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by municipal council or a panchayat union council or the Municipal Corporation of Madras or the Municipal Corporation of Madurai." The inclusive definition of "tenant" in Section 2(8) of the Act will include the surviving spouse or any son or daughter or the legal representatives of the deceased tenant. An examination of Section 2(8) shows that the person who is claiming that he is a tenant within the meaning of Section 2(8) of the Act must satisfy the following two conditions:

(1) that he or she is the surviving spouse or any son or daughter or the legal representative of the deceased tenant.

and

(2) that such spouse or son or daughter or the legal representative of the deceased tenant in the case of a residential building had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and in the case of a non-residential building such spouse, son, daughter or the legal representative of the deceased tenant had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continues to carry on such business

thereafter.

The second respondent can be called a tenant within the meaning of Section 2(8) of the Act only if the petitioners succeed in proving that the second respondent is the legal representative of the deceased tenant and that he had been in continuous association with the tenant for the purpose of carrying on business of the tenant up to the death of the tenant and continues to carry on such business thereafter.

9. The next question we have to examine is whether the second respondent is the legal representative of the deceased tenant, Serma Sami. No doubt the term "legal representative" is not defined in the Act. The term "legal representative" is defined in Section 2(ii) of the Code of Civil Procedure and it runs as follows:

"Legal representative" means a person who in law represents the estate of the deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued." In *M.R.S. Sankara Mudaliar and Others Vs. B.M. Haji Abubacker Maricar, Ratnam J.*, dealing with the meaning to be given to the term "legal representative" used in Section 2(8) of the Act observed as follows:

It is not in dispute that the provisions of the Act do not contain any definition of the term "legal representative". A consideration of the competent parts of Section 2(8) of the Act which defines a "tenant" indicates that apart from the surviving spouse, son or daughter of a deceased tenant, other categories of persons are also contemplated as legal representatives. The wide definition of the expression "tenant" as comprehending and including a legal representative of a deceased tenant not being the spouse, son or daughter, is not without significance, and so far as the provisions of the Act are concerned, it is not only heritable relationship that matters, but even other considerations. The definition of the expression "legal representative" u/s 2(11), Civil P.C., which includes a person who intermeddles with the estate of the deceased person should also point out to the wider amplitude of the expression "legal representative".

10. In *B. Rama Subba Reddi and Others Vs. P. Subbayamma and Others*, this Court had occasion to consider the question whether a brother of the original tenant, who carried on the partnership business along with the original tenant can be treated as legal representative coming within the purview of Section 2(8) of the Act. In that case, admittedly the original tenant one V. Nagi Reddi, took lease of the building in his individual capacity in the year 1949 for non-residential purpose and he carried on business in his individual capacity till 1966. From 1966 Nagi Reddi the original tenant, carried on the partnership business along with his brother Jayaraman Reddi in the same building till his death. Nagi Reddi died on 14.10.1980. Under a partnership deed dated 12.11.1980 some of the sons of Nagi Reddi became partners along with Jayaraman Reddi the brother of the original tenant, for the purpose of carrying on the same business in the

demised premises. The partnership deed dated 12.11.1980 was to take effect from 25.10.1980, a day after the death of the original tenant Nagi Reddi. It was found in that case that Jayarama Reddi, the brother of the deceased tenant Nagi Reddi alone was associated with the tenant Nagi Reddi in his business till the death of Nagi Reddi and the brother Jayarama Reddy continued to carry on the business of Nagi Reddy along with the sons of Nagi Reddy after his death, dealing with the question whether in those circumstances Jayarama Reddi brother of the original tenant Nagi Reddi can be considered as a legal representative of the deceased tenant, this Court held that Jayarama Reddi, brother of the deceased tenant Nagi Reddi was one of the legal representatives of the deceased tenant Nagi Reddi and, therefore, he is a tenant within the meaning of Section 2(8) of the Act. Dealing with the contention of the landlord in that case that admittedly the tenancy was only in favour of late Nagi Reddi, that the said Nagi Reddi did not take the consent of the landlord for converting his business into a partnership business that if the tenant had converted his business into a partnership business by taking in persons, who were not recognised by the landlord as a tenant in the demised building, such partnership will not bind the landlord, that the tenant's conversion shall be deemed as if the tenant had placed some other persons in occupation of the building without the consent of the landlord and that the said Act of the tenant will come within the exclusion of the last limb of Section 2(8)(ii) of the Act, which says but does not include a person placed in occupation of a building by its tenant" the learned Judge held as follows:

Admittedly Nagi Reddy continued to do his business, according to the contention of the respondents herein. Till the time of his death and he had only taken in partners with him in the course of the continuation of his business from 1966, His business is already there and continued to be there before 1966 and that after 1966 he had shared his rights in the business with others. Therefore, his taking other partners in his business will not at all amount to placing the other in occupation of the building by the tenant.

Applying the principle laid down in the above decision and considering the wide definition of the term "tenant" in Section 2(8) of the Act and position that so far as the provisions of the Act are concerned, it is not only heritable relationship that matters, but even other considerations, it has to be held that the second respondent, the brother of the deceased tenant Serma Sami is the legal representative of the deceased tenant. Then we have to consider the question whether the second respondent was associated with the business carried on by the deceased tenant in the petition mentioned property till his death and continues to carry on some business thereafter. The evidence in this case discloses that Serma Sami, brother of the second respondent became a tenant of the petition mentioned property under the petitioners father and he was paying rent upto October 1973. Exs. A-11 to A-13 are the counter-foils of the rent receipts signed by Serma Sami, brother of the second respondent. In the reply notice Ex. A-21 issued by the second respondent to the petitioners, he has stated

that the joint family consisting of Serma Sami and the second respondent was running a shop in the petition mentioned property for eight years and thereafter the second respondent is running the shop for the past 21 years. The specific case of the second respondent in his counter in R.C.O.P. is that he and his brother Serma Sami were running a shop for eight years and consequently the second respondent alone is running the shop for the past 22 years. The second respondent in his evidence as R.W.I has admitted that the second respondent and his brother together carried on business in the petition mentioned property for eight years and he further admitted that his present shop and the shop in which he and his brother Serma Sami together carried on business is one and the same. I have already held that the second respondent is a legal representative of the deceased tenant Serma Sami. The evidence referred above clearly shows that the second respondent was associated with the business carried on by the deceased tenant in the petition mentioned property till his death and he continues to carry on the same business thereafter. From the above discussion it follows that the second respondent is a tenant within the meaning of Section 2(8) of the Act.

11. In the reply notice under Ex. A-21 and in the counter filed by the second respondent in the R.C.O.P. the second respondent has specifically denied the title of the petitioners by stating that they are the owners of the petition mentioned property. The settlement deed Ex. A-2 the house tax receipts Exs. A-3, A-4 and A-9 and A-10 go to show that the petitioners have got title to the petition mentioned property and, therefore, the denial of the petitioners' title by the second respondent is not bona fide. Under these circumstances, the concurrent findings of the Rent Controller and the Appellate Authority that the denial of title of the petitioners by the second respondent is not bona fide is correct and do not call for interference in this revision.

12. The case of the petitioners is that after September, 1973, the second respondent did not pay any rent to the petitioners. The second respondent has not denied that he had not paid any rent to the petitioners after September, 1973. There is also no evidence to show that the second respondent paid any rent for the demised premises to the petitioners after September, 1973. In these circumstances, the Rent Controller as well as the Appellate Authority have rightly found that the second respondent committed wilful default in the payment of rent.

13. On the basis of the evidence on record the Rent Controller and the Appellate Authority have also rightly found that the petitioners bona fide required the petition mentioned property for demolition and reconstruction. Under these circumstances, the reasons given by the Rent Controller and the Appellate Authority for passing an order of eviction against the second respondent are correct and they are not liable to be set aside in this civil revision petition. There are no merits in this civil revision petition and the same is liable to be dismissed. Accordingly the civil revision petition is dismissed. No costs.